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Decision

Matter of: Amentum Services, Inc.

File: B-421183; B-421183.2; B-421183.3

Date: January 17, 2023

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DIGEST

1. Protest challenging the agency's evaluation of the protester's proposal under the mission suitability factor is dismissed as an untimely challenge to the terms of the solicitation; remaining allegations regarding the evaluation of proposals under the mission suitability factor are denied because the record reflects that the agency's evaluation was reasonable and consistent with the solicitation criteria.
2. Challenge to the conduct of discussions is denied where the record reflects that the agency's discussions were meaningful, adequately tailored to each offeror's proposal, and not otherwise inconsistent with applicable procurement law or the terms of the solicitation.
3. Protest challenging the agency's evaluation of the awardee's past performance is denied where the evaluation was reasonable and consistent with the solicitation's stated evaluation criteria.
4. Protest challenging the agency's best-value tradeoff decision is denied where the record reflects that the decision was reasonable, consistent with the terms of the solicitation, and adequately documented.

DECISION

Amentum Services, Inc. (Amentum), of Germantown, Maryland, protests the award of a contract to Engineering, Research and Consulting, Inc. (ERC), of Huntsville, Alabama, under request for proposals (RFP) No. 80KSC021R0038, issued by the National Aeronautics and Space Administration (NASA), for services to operate and maintain laboratories, developmental shops, and test facilities for the Kennedy Space Center in Florida. The protester, the incumbent contractor, challenges various aspects of the agency's evaluation of proposals and the best-value tradeoff decision.

We deny the protest.

BACKGROUND

The Kennedy Space Center is a multi-user spaceport for launches of crewed and un-crewed space flights. Agency Report (AR), Tab 5B, Performance Work Statement (PWS) at 1. NASA issued the solicitation on December 3, 2021, seeking a contractor to support the operation and maintenance of a diverse set of laboratories, developmental shops, and test facilities at the Kennedy Space Center. Contracting Officer's Statement (COS) at 1-2. The contemplated contract is referred to as "LASSO II," which stands for laboratory support services and operations. The solicitation contemplated a fixed-price contract with an anticipated period of performance of 5 years. *Id.* at 2.

The solicitation established that award would be made using a best-value tradeoff based on the following factors: mission suitability, past performance, and price.¹ AR, Tab 5A, RFP at 86. The mission suitability factor and the past performance factor, when combined, were significantly more important than price. *Id.* The past performance factor was the most important factor, followed by price and mission suitability. *Id.*

The mission suitability factor consisted of three subfactors, with the following assigned point values: management approach (600 points), technical approach (300 points), and small business utilization (100 points). RFP at 87. NASA would assign adjectival ratings and numerical scores for each subfactor, and would establish an overall numerical mission suitability factor score. *Id.* at 88. The agency would evaluate the offeror's approach to accomplishing the requirements, and any inconsistencies between the proposal volumes could adversely affect the ratings assessed. *Id.* at 87.

¹ The agency issued four amendments to the solicitation before the receipt of initial proposals and four amendments subsequent to the establishment of the competitive range. See COS at 7; AR, Tab 4, RFP Amendments. Unless otherwise stated, all citations to the RFP refer to the conformed copy of solicitation sections B through M, submitted as agency report Tab 5A.

As relevant here, for the price proposal volume, the solicitation instructed offerors to submit a narrative and complete several attachments, including a Microsoft Excel workbook called the LASSO II price template. RFP at 79. The solicitation provided that the LASSO II price template should “represent a fully integrated pricing strategy to include all subcontractors,” and it should be consistent with the offeror’s management and technical approaches. *Id.*; see also AR, Tab 30, RFP Attach. L-02B at Instructions. The LASSO II price template included a tab titled “LASSO II Base FBLR [Fully Burdened Labor Rates]” and a tab titled “Prime Base FBLR.”² AR, Tab 30, RFP Attach. L-02B at Instructions. The instructions for the LASSO II price template stated that the LASSO II FBLR tab could include blended rates based on “the potential of co-mingling of Prime offeror and subcontractor team member(s) labor rates.” *Id.* The instructions continued: “Prime offeror is responsible for a comprehensive proposal submittal to the Government for all proposed labor rate(s) per hour, to include its team member(s), based on its proposal strategy, PWS work share allocation, and PWS concurrent participation.” *Id.*

The solicitation included a subcontractor price template for subcontractors’ proposed rates. RFP at 80. The subcontractor price template could be submitted to the agency as part of the offeror’s proposal or be submitted directly to NASA by the subcontractor. *Id.* at 80-81.

NASA received four proposals by the deadline to submit initial proposals. COS at 8. A source evaluation board (SEB) evaluated the initial proposals, and the source selection authority (SSA) established a competitive range that included only ERC and Amentum. *Id.* After establishing the competitive range, NASA provided Amentum and ERC with instructions regarding oral and written discussions, and the agency issued amendment 5. *Id.* at 9.

Amendment 5 added Federal Acquisition Regulation (FAR) provision 52.222-46, Evaluation of Compensation for Professional Employees, and amended the instructions and evaluation criteria to include a total compensation plan (TCP) as the eighth element of the management approach subfactor. AR, Tab 4, RFP Amendments at 50.³ The offeror and any major subcontractor⁴ were required to submit a TCP addressing the requirements of FAR provision 52.222-46. *Id.* NASA would evaluate TCPs for

² The Prime Base FBLR tab was designated as informational only and not to be evaluated. The solicitation advised that offerors were only to include their prime offeror FBLR rates and not their subcontractor rates on the spreadsheet. AR, Tab 30, RFP Attach. L-02B at Instructions.

³ AR, Tab 4, RFP Amendments is not paginated. All citations to the document refer to the Adobe PDF page numbers of the document.

⁴ For the TCP provision, the solicitation defined “[m]ajor [s]ubcontractor” as “a subcontractor that has a subcontract with a total proposed value, base and all option periods, of 10 percent or greater.” AR, Tab 4, RFP Amendments at 57.

understanding of the requirements and soundness of the management approach. *Id.* at 61. As relevant here, amendment 5 stated that proposing professional compensation levels lower than those of predecessor contractors might adversely affect the mission suitability score; proposing average direct labor rates less than the Economic Research Institute (ERI)⁵ 50th percentile salary range for the applicable geographic area would be viewed as evidence of failing to comprehend the complexity of the requirements; and TCPs had to align with the proposal's price volume.⁶ *Id.* at 61-62.

When NASA opened discussions in June 2022, NASA advised each offeror that it was not seeking revisions to portions of the price proposal at that time, including the LASSO II price template or the subcontractor price template.⁷ AR, Tab 13B, Letter from NASA to Amentum, June 24, 2022 at 2; AR, Tab 14B, Letter from NASA to ERC, June 24, 2022 at 2. Instead, NASA provided instructions for submitting proposal change pages and a narrative in response to discussions questions and amendment 5, and stated that offerors remaining in the competitive range would be able to submit a final proposal revision when discussions were completed. *Id.*

In July, during discussions, the offerors submitted revised mission suitability proposal volumes, which included their first, newly prepared TCPs. See COS at 13-14. When the SEB evaluated the TCPs while discussions were then ongoing, the SEB did not compare the rates in the offeror's TCP to the rates in the offeror's initial price proposal. Supp. COS at 5. NASA has explained that it believed a comparison of the TCPs first submitted in response to amendment 5 and during discussions against the initial price proposals "would have been inappropriate . . . because the Offerors were not required to ensure that their initial pricing aligned with their TCPs nor did the original solicitation advise Offerors that the Agency would perform any type of price realism analysis of its price proposal." Supp. COS at 5. NASA expected each offeror to revise the price proposal to address the TCP requirements in the offeror's final proposal revision.⁸ *Id.* at 8.

⁵ The agency states: "ERI is a compensation analytics company that assists subscribers with assessments of salaries, cost-of-living comparisons, and executive compensation information. ERI collects salary survey data from internal surveys, third-party salary surveys, and public sources to calculate geographic salary differentials." Memorandum of Law (MOL) at 20 n.11.

⁶ Amendment 5 did not change the instructions for the price volume or evaluation criteria for the price factor.

⁷ NASA states that it did not request revised pricing during discussions because it often holds multiple rounds of discussions, and it could impose an unreasonable burden on the offerors to submit updated pricing after every round of discussions. Supp. COS at 6 n.5.

⁸ When NASA closed discussions and requested final proposal revisions, NASA issued amendment 7, which updated the period of performance and provided revised pricing
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Thus, prior to the submission of final proposal revisions and while discussions were ongoing, the SEB compared the rates in each offeror's TCP against the incumbent contractor rates and the ERI salary data, in the aggregate.⁹ The SEB identified aspects of Amentum's TCP that required clarification, but the SEB did not identify any weaknesses.¹⁰ COS at 13-14. The SEB identified significant weaknesses in the TCPs submitted by ERC and its major subcontractor, Aetos Systems, Inc. (Aetos). COS at 14; AR, Tab 14G, Email from NASA to ERC, Aug. 2, 2022. Namely, ERC and Aetos proposed base salaries that were less than the ERI 50th percentile salary range and less than the historical rates. AR, Tab 14G, Email from NASA to ERC, Aug. 2, 2022 at 6-7; COS at 14. NASA informed each offeror of the areas of concern in their respective TCPs via email and during a conference call held for each offeror. COS at 14-15; AR, Tab 13G, Email from NASA to Amentum, Aug. 1, 2022; AR, Tab 14G, Email from NASA to ERC, Aug. 2, 2022.

Before discussions closed, NASA provided each offeror with an opportunity to submit a written narrative and proposal change pages. COS at 15. The offerors submitted revised TCPs and proposal change pages in early August. NASA reviewed each offeror's revised TCP and did not identify any weakness or areas needing clarification. *Id.* NASA then closed discussions and requested final proposal revisions. In the letter to each offeror requesting final proposal revisions, NASA wrote: "You are reminded that to the extent that any of the items marked 'Closed' are dependent upon corresponding revisions to the price and labor distribution and mapping templates, final disposition will be subject to the Government's evaluation of these templates as part of your final proposal revision." AR, Tab 13H, Letter from NASA to Amentum, August 12, 2022 at 1; AR, Tab 13H, Letter from NASA to ERC, August 12, 2022 at 1. The agency requested

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templates. COS at 16. NASA also required a complete resubmittal of the price templates. AR, Tab 13H, Letter from NASA to Amentum, August 12, 2022 at 2; AR, Tab 13H, Letter from NASA to ERC, August 12, 2022 at 2.

⁹ NASA states that it assessed rates in the aggregate because individual proposed rates could be higher or lower than the incumbent rates. COS at 19. "The aggregate value was determined based on the sum of the rate delta (proposed blended rate minus the incumbent rate) for each classification multiplied by the respective [government fiscal year] 2023 hours for each labor classification." *Id.* at 20. A positive outcome indicated the offeror proposed sufficient labor dollars, and a negative outcome indicated the offeror did not propose sufficient labor dollars to retain qualified personnel. *Id.* The agency states that it used rates proposed for 2023 because the rates for subsequent years were escalated. *Id.* n.20.

¹⁰ The SEB found that although Amentum's TCP included individual rates that were either higher or lower than the incumbent rates, when considered in the aggregate, the rates were positive. Supp. COS at 16. When Amentum submitted its final proposal revision, it reduced the proposed rates in its TCP for several labor categories. COS at 45.

a complete resubmittal of the price templates. AR, Tab 13H, Letter from NASA to Amentum, August 12, 2022 at 2; AR, Tab 13H, Letter from NASA to ERC, August 12, 2022 at 2. NASA requested that final proposal revisions be submitted no later than August 18, 2022.¹¹ COS at 16. NASA received timely final proposal revisions from Amentum and ERC, which the SEB evaluated as follows:

	Amentum	ERC
Mission Suitability	Adjectival Rating / Score	
Management Approach	Good / 324	Good / 396
Technical Approach	Good / 180	Good / 180
Small Business Utilization	Good / 62	Good / 67
Total Score	566	643
Past Performance	Very High	Very High
Price	\$236,742,571	\$239,704,522

COS at 17; see *also* AR, Tab 19, Final Evaluation Briefing at 64.

As noted above, the SEB did not determine whether the offerors' TCPs aligned with their respective price proposals until after discussions had concluded and after the offerors submitted final proposal revisions. Supp. COS at 6. As part of the evaluation of final proposals, the agency compared the rates in each offeror's TCP to the blended labor rates from the price proposal volume.¹² *Id.* at 25. The SEB found that the blended rates from Amentum's price proposal did not align with the rates in Amentum's TCP. *Id.* at 27. NASA also compared each offeror's proposed blended rates against (1) the incumbent contractor's rates in the aggregate and (2) the ERI salary ranges in the aggregate. COS at 20.

The SEB assessed a weakness to Amentum's proposal under the management approach subfactor after finding that, in the aggregate, the blended rates were lower than the incumbent rates and lower than the 50th percentile for the equivalent ERI salary range. AR, Tab 18A, Amentum Mission Suitability Evaluation at 9-10. The SEB

¹¹ NASA subsequently extended the submission deadline to August 22, 2022, after both offerors submitted questions and Amentum requested an extension. COS at 16. When Amentum requested an extension of the submission deadline, it noted the need to request revised pricing from its subcontractors. AR, Tab 15G, Amentum Email to NASA, Aug. 12, 2022.

¹² Because the LASSO II Base FBLR template in Amentum's price proposal was incomplete, NASA calculated Amentum's blended labor rates using the subcontractor price templates and Amentum's prime contractor rates from the LASSO II price template. 2nd Supp. COS at 8. ERC's price proposal included a complete LASSO II Base FBLR template, and NASA used the blended labor rates from that spreadsheet to evaluate ERC's TCP. *Id.* at 9-10.

explained the weakness as follows: “The proposed blended salary rates do not demonstrate an ability to maintain program continuity and uninterrupted high-quality work. Based on the foregoing, the proposed blended salary rates for all professional labor classifications increases the risk of unsuccessful contract performance.” *Id.* at 11. The SEB assessed a strength to ERC’s proposal pertaining to its TCP because the proposed blended rates, in the aggregate, exceeded the incumbent rates and exceeded the 50th percentile ERI salary range. AR, Tab 18B, ERC Mission Suitability Evaluation at 8-10.

The SEB presented its findings to the SSA, who noted that although both offerors’ proposals were rated as good under all of the mission suitability subfactors, ERC’s proposal was assessed a higher point score and was not assessed any weaknesses. AR, Tab 20, Source Selection Decision at 7. The SSA found ERC’s proposal to be somewhat superior to Amentum’s proposal under the mission suitability factor because of the differences in the offerors’ TCPs. *Id.* at 9. The SSA concurred with the SEB’s evaluation of the offerors’ past performance and found the proposals were essentially equal under that factor. *Id.* at 10. The SSA recognized that ERC proposed a higher price, but she found that the annual difference was negligible. *Id.* The SSA identified the strength that ERC’s proposal was assessed for its TCP as a discriminating factor, concluded that the benefit was worth its slightly higher price, and selected ERC’s proposal for award. *Id.* at 10-11.

After being notified of the award decision and receiving a debriefing, Amentum filed this protest with our Office.

DISCUSSION

Amentum challenges NASA’s evaluation of the offerors’ proposals under the mission suitability factor, the agency’s conduct of discussions, the evaluation of ERC’s proposal under the past performance factor, and the best-value tradeoff decision. After reviewing the record, we find no basis to sustain Amentum’s protest.¹³

Mission Suitability Factor Evaluation

Amentum contends that NASA’s evaluation of proposals under the mission suitability factor was unreasonable because the agency improperly considered the rates of Amentum’s non-major subcontractors when evaluating its TCP, evaluated the offerors’ subcontractors’ rates unequally, and over-weighted the importance of the TCP in the evaluation. Protest at 31-32; Supp. Comments & 2nd Supp. Protest at 15.

¹³ In its various protest submissions, Amentum raised arguments that are in addition to, or variations of, those discussed below. While we do not specifically address all of the protester’s arguments, we have considered them all and find that they afford no basis on which to sustain the protest.

Consideration of Subcontractor Rates

The protester argues it was unreasonable for NASA to consider the rates of non-major subcontractors in the professional compensation evaluation when only major subcontractors were required to submit rates as part of the TCP submission. Protest at 31-32; Comments & Supp. Protest at 26-27. Accordingly, Amentum asserts that the agency should not have used the rates in the price proposal volume when evaluating professional compensation. Comments & 2nd Supp. Protest at 36. NASA responds that the evaluation was consistent with the solicitation, and, moreover, Amentum's argument is untimely. MOL at 17-19; Supp. MOL at 7-10.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. Our timeliness rules specifically require that a protest based upon alleged solicitation improprieties that are apparent prior to the closing time for submission of proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1); *AmaTerra Envtl. Inc.*, B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3.

The solicitation, as amended, stated: "TCPs must align with the price volume. Prices that are insufficient to cover direct labor rates proposed in the TCP may result in rejection of the proposal." RFP at 90.1. The instructions for the TCP established that compensation must be consistent with the proposed prices in the price proposal volume. *Id.* at 75.1. Additionally, the evaluation criteria for the mission suitability factor provided: "The Government will validate the consistency between all proposal volumes and any inconsistencies identified may adversely impact the offeror's adjectival rating(s) and score." *Id.* at 87. Accordingly, offerors were on notice that NASA's evaluation of the professional compensation as set forth in the TCP would not be limited to the rates provided in the offeror's TCP; it would also involve a comparison between the offeror's TCP rates and the information included in the offeror's price proposal.

Offerors were also on notice that NASA would use the blended rates from the price proposal in its evaluation. AR, Tab 30, RFP Attach. L-02B at Instructions. The solicitation provided that the prime offeror was responsible for ensuring all rates proposed--including rates of subcontractors--were consistent with its proposal strategy. RFP at 75.1. Offerors were also on notice that NASA considered the prime offeror's labor rates in the Prime Base FBLR worksheet to be informational only and therefore not the basis for the agency's evaluation. It was the LASSO II FBLR worksheet--which included subcontractor rates--that would be used to evaluate proposals.¹⁴ *Id.* Thus,

¹⁴ To the extent the protester considered the use of blended rates (which included rates of non-major subcontractors) to evaluate the TCP to be inappropriate because an offeror may not have access to the rates proposed by its subcontractors, Amentum was
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while Amentum objects to NASA's consideration of subcontractor rates from the price proposal in its evaluation of the TCP, Amentum's arguments are at odds with the basis of evaluation outlined in the solicitation as described above. To the extent Amentum now claims that such an evaluation approach is inherently unreasonable, the argument is an untimely challenge to the terms of the solicitation, which should have been raised before the closing time for submission of final proposal revisions.

Unequal Evaluation

Amentum also argues that the agency's evaluation of the offerors' proposals was unequal. The protester argues that NASA scrutinized the subcontractor price templates submitted by Amentum's subcontractors, but disregarded the failure of two of ERC's subcontractors to submit subcontractor price templates with the final proposal revision and instead relied on ERC's LASSO II FBLR worksheet for its evaluation.¹⁵ Supp. Comments & 2nd Supp. Protest at 8-9, 15. NASA asserts that there was no unequal treatment because it used blended labor rates to evaluate both offerors' proposals; the only difference was the source of the rates, which stemmed from a difference in the offerors' proposals. 2nd Supp. MOL at 14-16.

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required to raise the matter prior to the deadline for the submission of final proposal revisions. 4 C.F.R. § 21.2(a)(1).

¹⁵ The protester also contends that NASA was required to reject ERC's proposal as non-compliant because ERC's final proposal revision, by omitting subcontractor price templates, failed to meet a material solicitation requirement. Supp. Comments & 2nd Supp. Protest at 9-10; 2nd Supp. Comments at 2. We disagree. To support its position, Amentum cites several decisions from our Office, including: *Leidos, Inc.*, B-418987, B-418987.2, Oct. 29, 2020, 2020 CPD ¶ 357; *BTAS, Inc.; Innovative Technologies, Inc.*, B-415810.4 *et al.*, Oct. 3, 2018, 2018 CPD ¶ 346; and *Orion Technology, Inc.*, B-405077, Aug 12, 2011, 2011 CPD ¶ 159. Supp. Comments & 2nd Supp. Protest at 8-9.

In each of those protests, we denied a challenge to an agency's decision to reject a protester's proposal when the solicitation expressly stated that the agency might eliminate a proposal for failing to comply with the solicitation's instructions. Here, nothing in the solicitation suggested that NASA would eliminate an offeror's proposal if the proposal omitted subcontractor price templates. Additionally, when a protester alleges that an agency waived or relaxed a solicitation requirement, the protester must show that it was competitively prejudiced by the agency's actions. See *Orbital Scis. Corp.*, B-414603, B-414603.2, July 26, 2017, 2017 CPD ¶ 249 at 6. To demonstrate competitive prejudice in such a scenario, a protester must show that it would have altered its proposal to its competitive advantage, had it known the requirement would be waived. *Id.* Amentum has made no such showing here.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *Rockwell Elec. Commerce Corp.*, B-286201, *et al.*, Dec. 14, 2000, 2001 CPD ¶ 65 at 5. To succeed in a protest alleging unequal treatment in a technical evaluation, a protester must show that the differences in ratings did not stem from differences between the offerors' proposals. *Paragon Sys., Inc.*; *SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

Here, the record reflects that NASA used each offeror's blended labor rates to evaluate the respective offeror's professional compensation as set forth in their TCPs. 2nd Supp. MOL at 14-15; Supp. COS at 25. The LASSO II Base FBLR spreadsheet in Amentum's proposal did not include the rates of Amentum's subcontractors, however. AR, Tab 8C, Amentum Final Proposal Price Vol. at 35-36; Supp. COS at 25-26. Amentum's subcontractors had submitted rates directly to NASA using the subcontractor price template. AR, Tab 8C, Amentum Final Proposal Price Vol. at 111-132. Therefore, the record reflects that NASA calculated blended rates using Amentum's proposed rates and the rates of its subcontractors and used those blended rates in the evaluation of Amentum's TCP. Supp. COS at 26; AR, Tab 18F, Blending Calculations at BlendedCalc Worksheets B1-B6.

NASA also acknowledges that two of ERC's subcontractors did not submit subcontractor price templates. 2nd Supp. MOL at 4; 2nd Supp. COS at 9. However, NASA states that it did not need these templates to conduct its evaluation because the LASSO II Base FBLR spreadsheet in ERC's proposal provided blended labor rates for ERC and its subcontractors. 2nd Supp. COS at 4. The narrative of ERC's price proposal explained that the LASSO II Base FBLR spreadsheet included rates from ERC's subcontractors. *Id.* (quoting AR, Tab 10C(i), ERC Final Proposal Price Vol. at 12). Thus, unlike with Amentum's evaluation, NASA did not have to calculate blended rates for ERC, the rates was already set forth in ERC's LASSO II Base FBLR spreadsheet. Using those blended rates, NASA evaluated ERC's TCP, just as it had done with the blended rates NASA calculated for Amentum. 2nd Supp. COS at 5.

On our review of the record, we find there is no evidence of unequal treatment. NASA used blended rates to evaluate both offerors' TCPs; only the sources from which NASA obtained the rates differed.

Relative Importance of the TCP

The protester contends that NASA put undue emphasis on the TCP when it decreased Amentum's proposal's score under the management approach subfactor based on the weakness associated with its TCP, disregarding the three strengths that NASA assessed under the same subfactor. Protest at 30-31; Comments & Supp. Protest at 21, 26. The agency responds that NASA reasonably considered the benefits underlying the strengths assessed to each offeror's proposal and scored the proposals accordingly. MOL at 25-26.

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency regarding a proposal's relative merits, as the evaluation of proposals is a matter within the agency's discretion. *Peraton, Inc.*, B-417088, B-417088.2, Feb. 6, 2019, 2019 CPD ¶ 190 at 5; *Del-Jen Educ. & Training Grp./Fluor Fed. Sols. LLC*, B-406897.3, May 28, 2014, 2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, and adequately documented. *Management Sys. Int'l, Inc.*, B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 5. A protester's disagreement with the agency's evaluation judgments, without more, is insufficient to establish that an evaluation was improper or lacked a reasonable basis. *Wolverine Tube Inc. d/b/a Wolverine Indus.*, B-418339.4, B-418339.5, July 26, 2022, 2022 CPD ¶ 219 at 4-5.

As noted above, the TCP was one of eight areas within the management approach subfactor, and the management approach subfactor was worth 600 points. RFP at 87-91. The protester contends that its proposal would have received a higher score, had the agency not given the TCP undue weight. Comments & Supp. Protest at 25-26. We disagree. We find NASA's assessment to be consistent with the evaluation criteria. There is no legal requirement that an agency award the highest possible rating or score under an evaluation factor simply because the proposal contains strengths. See *Applied Tech. Sys., Inc.*, B-404267, B-404267.2, Jan. 25, 2011, 2011 CPD ¶ 36 at 9. Evaluation ratings and the number of strengths and weaknesses assessed are merely a guide to, and not a substitute for, intelligent decision making in the procurement process. *Affolter Contracting Co., Inc.*, B-410878, B-410878.2, Mar. 4, 2015, 2015 CPD ¶ 101 at 11 n.10. Source selection officials are required to consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals. *Salient CRGT, Inc.*, B-419759, B-419759.8, July 21, 2021, 2021 CPD ¶ 270 at 9. The protester focuses on the number of strengths and weaknesses, without considering the underlying bases for the strengths and weaknesses.

The record demonstrates that NASA considered the strengths and weaknesses assessed to Amentum's proposal under the management approach subfactor, as well as the strengths assessed to ERC's proposal. AR, Tab 18A, Amentum Mission Suitability Evaluation at 1-5, 9-11; AR, Tab 18B, ERC Mission Suitability Evaluation at 3-10. The agency reasonably determined that the weakness assessed as a result of Amentum's blended labor rates being too low to maintain program continuity posed a risk to contract performance. AR, Tab 18A, Amentum Mission Suitability Evaluation at 11. The SEB reasonably factored that risk of unsuccessful performance into the score assessed to Amentum's proposal. COS at 39. Amentum's arguments to the contrary reflect nothing more than its disagreement with NASA's evaluation.

Discussions

Amentum argues NASA's discussions were not meaningful because the agency did not advise the protester (1) that the proposed rates in the TCP were inconsistent with the rates in Amentum's price proposal and (2) that the rates proposed by Amentum's subcontractors resulted in the protester's proposed blended rates as set forth in its price proposal being less than the incumbent rates and the ERI 50th percentile salary range. Protest at 33-34; Comments & Supp. Protest at 4-5. The protester also asserts that NASA misled Amentum by not using blended rates in the TCP evaluation until after discussions were complete. Comments & Supp. Protest at 8-9. Additionally, Amentum contends that the discussions were unequal because NASA informed ERC about low rates during discussions. *Id.* at 10.

When discussions are conducted in a negotiated procurement, they must be meaningful, equitable, and not misleading. *QinetiQ N. Am., Inc.*, B-405163.2 *et al.*, Jan. 25, 2012, 2012 CPD ¶ 53 at 16. To be meaningful, discussions must identify, at a minimum, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. FAR 15.306(d)(3). To satisfy the requirement for meaningful discussions, an agency need only lead an offeror into the areas of its proposal requiring amplification or revision; all-encompassing discussions are not required. *Id.*; *General Dynamics Info. Tech., Inc.*, B-418533, June 11, 2020, 2020 CPD ¶ 212 at 9. Although discussions may not be conducted in a manner that favors one offeror over another, discussions are not required to be identical among offerors and need only be tailored to each offeror's proposal. FAR 15.306(d)(1), (e)(1); *Integrated Med. Sols., LLC*, B-418754, B-418754.2, Aug. 20, 2020, 2020 CPD ¶ 287 at 5. Moreover, agencies are not required to reopen discussions to afford an offeror an additional opportunity to revise its proposal where a weakness or deficiency is first introduced in the firm's revised proposal. *Perspecta Enter. Sols., LLC*, B-418533.2, B-418533.3, June 17, 2020, 2020 CPD ¶ 213 at 15; *Research Analysis & Maint., Inc.*, B-410570.6, B-410570.7, July 22, 2015, 2015 CPD ¶ 239 at 10.

An agency may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns, or misinform the offeror about a problem with its proposal or about the government's requirements. *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 5-6; *Refinery Assocs. of Texas, Inc.*, B-410911.2, Mar. 18, 2015, 2015 CPD ¶ 116 at 6. An agency's discussions are not misleading or otherwise improper merely because an offeror makes an independent business judgment that it later regrets. *Millennium Eng'g & Integration Co.*, B-417359.4, B-417359.5, Dec. 3, 2019, 2019 CPD ¶ 414 at 7 n.9. Our Office will review the record to ensure that procurements are conducted consistent with a concern for fair and equitable competition and with the terms of the solicitation. *Freedom Sci., Inc.*, B-401173.3, May 4, 2010, 2010 CPD ¶ 111 at 4.

The protester contends that discussions were misleading and not meaningful because the agency led Amentum to believe that the TCP was being evaluated without considering the rates of non-major subcontractors. Comments & Supp. Protest at 4-5. For the reasons discussed above, we find Amentum's assertions regarding the use of non-major subcontractors' rates to be untimely. Amentum should have known from the terms of the solicitation that NASA would evaluate the TCP for consistency with the rates in the price proposal, which included all subcontractor rates.

Amentum also contends that NASA misled the protester concerning the sufficiency of its proposed rates by not comparing the rates in its TCP to the blended rates from its initial price proposal during discussions. Comments & Supp. Protest at 8. Amentum asserts that if NASA had undertaken this analysis during discussions, the agency would have informed the protester that its proposed rates were insufficient. *Id.* NASA argues that it would have been inappropriate to use the rates in the initial price proposals to evaluate TCPs because initial price proposals were developed before the issuance of amendment 5. Supp. MOL at 23; Supp. COS at 5. When offerors prepared their initial price proposals, the solicitation did not contemplate a realism analysis or require the price proposal to be consistent with the TCP. Supp. COS at 5. The agency also contends that Amentum should have known that the price alignment assessment could not have been performed until after the submittal of final proposal revisions because offerors did not submit revised price templates during discussions. *Id.* at 6 n.5.

We find that NASA did not mislead the protester with respect to the sufficiency of the rates in Amentum's TCP. When NASA opened discussions in June 2022, offerors had not yet submitted TCPs because amendment 5, which imposed the requirement to submit a TCP, had not been issued. In July, each offeror then submitted its first TCP with its proposal change pages but did not yet submit a revised price proposal. During discussions, NASA evaluated the offerors' first TCPs and revised TCPs, but did not use blended rates from the initial price proposals as the basis for its evaluation because those rates had been developed before NASA amended the solicitation to include FAR provision 52.222-46, required a TCP, and required each offeror to ensure that the rates in the price proposal were consistent with the rates in the TCP. Supp. COS at 5. When NASA evaluated Amentum's first TCP and revised TCP, prior to receiving revised price proposals, NASA found the rates in the TCP were sufficient. MOL at 29-30.

NASA did not determine that Amentum's TCP presented a weakness until after discussions had concluded, and during the agency's evaluation of final proposal revisions. NASA's assessment of the sufficiency of Amentum's proposed rates changed during the evaluation of final proposal revisions because (1) Amentum reduced the proposed rates for several labor categories and (2) the rates proposed by Amentum's subcontractors in the final proposal revision resulted in blended rates that

were less than the incumbent rates and the ERI 50th percentile.¹⁶ COS at 44-45. The record shows NASA did not have any concerns about the sufficiency of Amentum's rates in the TCP during discussions, prior to the submission of final proposal revisions, and, as such, NASA did not mislead the protester.

Amentum also argues that discussions were unequal because NASA informed ERC that rates in its TCP were less than the incumbent rates and the 50th percentile for the equivalent ERI salary range. Comments & Supp. Protest at 10-12. Amentum's argument ignores a fundamental difference between the offerors' proposals: ERC's first TCP included rates that were, in the aggregate, less than the incumbent rates and the 50th percentile for the equivalent ERI salary range, and Amentum's TCP did not. Supp. MOL at 26-27; Supp. COS at 16-17.

Amentum asserts that its TCP included individual rates that were less than the incumbent rates and the ERI 50th percentile, suggesting that the agency was required to raise this issue in discussions, but Amentum's argument fails to recognize that NASA evaluated the offerors' rates in the aggregate. COS at 19-20; AR, Tab 27A, LASSO II Rate Range Tool. When the agency evaluated Amentum's TCP at the time that it conducted discussions, the proposed rates, in the aggregate, were greater than the incumbent rates and the ERI 50th percentile. Supp. COS at 16-17; AR, Tab 27A, LASSO II Rate Range Tool at Amentum. When NASA evaluated ERC's TCP during discussions, NASA found that the proposed rates, in the aggregate, were less than the incumbent rates and the ERI 50th percentile. Supp. COS at 16-17; AR, Tab 27A, LASSO II Rate Range Tool at ERC. The discussions were tailored to each offeror's proposal and were not unequal. *Integrated Med. Sols., LLC, supra*.

Past Performance

Amentum contends that NASA's evaluation of ERC's proposal under the past performance factor was unreasonable because the agency improperly credited ERC with the past performance of a populated joint venture of which ERC was the minority member.¹⁷ Protest at 22-23. The protester asserts that it was improper to credit ERC with the performance reference because a populated joint venture is "a different entity type than an unpopulated joint venture, which relies on employees of the [joint venture] members to perform all operations and run the [joint venture]." *Id.* at 24. NASA responds that it properly considered the experience of the joint venture because ERC had a sufficient role in the joint venture. MOL at 8.

¹⁶ As stated above, agencies are not required to reopen discussions to afford an offeror an additional opportunity to revise its proposal where a weakness or deficiency is first introduced in the firm's revised proposal. *Perspecta Enter. Sols., LLC, supra*.

¹⁷ A joint venture is "populated" where personnel who will perform work under a contract are employed by the joint venture itself; a joint venture is "unpopulated" where personnel who will perform work under a contract are employed by the firms that comprise the joint venture. See 13 C.F.R. § 121.103(h).

An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. *Metropolitan Interpreters & Translators, Inc.*, B-415080.7, B-415080.8, May 14, 2019, 2019 CPD ¶ 181 at 10; see also *SIMMEC Training Sols.*, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. *DynCorp Int'l, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 14. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. *FN Mfg., LLC*, B-402059.4, B-402059.5, Mar. 22, 2010, 2010 CPD ¶ 104 at 7.

ERC included the Marshall Engineering Technicians and Trades Support (METTS) II contract as one of its past performance references. AR, Tab 9C, ERC Initial Proposal Past Performance Vol. at 2. The METTS II contract was performed by Aerie Aerospace, LLC (Aerie), a populated joint venture with two members: ERC and Aetos. *Id.* In its proposal, ERC explained that all employees involved in performance were employees of the joint venture, and performance was governed by a board of managers composed of individuals from both members. *Id.* The proposal stated that ERC and Aetos were actively involved in all aspects of contract operations. *Id.*

The record demonstrates that NASA was aware that Aerie--and not ERC--was the prime contractor for the METTS II contract. AR, Tab 17B, ERC Past Performance Evaluation Report at 9. The agency understood that Aerie was a populated joint venture. *Id.* The SEB found that because the joint venture consisted of ERC and its proposed major subcontractor for LASSO II, and ERC had a sufficient role in the joint venture, the past performance was applicable to ERC. *Id.*; COS at 31.

We conclude that NASA's consideration of the METTS II contract in the past performance evaluation was unobjectionable. When an offeror relies on past performance of the firm as a participant in a joint venture, the agency may consider the performance on the basis that the offeror had a sufficient role in the joint venture to make the performance relevant. *Paragon Sys., Inc.*, B-414515, B-414515.2, June 29, 2017, 2017 CPD ¶ 240 at 10; *Ashland Sales & Serv. Co.*, B-408010.6, B-408010.7, Mar. 28, 2014, 2014 CPD ¶ 113 at 13. Here, NASA reasonably determined that ERC's role in Aerie made the joint venture's performance of the METTS II contract relevant. Accordingly, we deny Amentum's protest of the agency's past performance evaluation.¹⁸

¹⁸ The protester also contends that the past performance evaluation was unreasonable because NASA failed to go beyond the adjectival ratings and recognize that Amentum's experience as the incumbent was a discriminator. Protest at 26. We see no basis to
(continued...)

Best-Value Tradeoff Decision

Finally, Amentum contends the agency's best-value tradeoff decision was unreasonable because it was premised on a flawed evaluation and failed to give appropriate weight to the evaluation factors. Protest at 38, 40. Because we have denied the protester's challenges to the evaluation, we find the protester's derivative challenge to the agency's best-value decision also to be without merit. *U.S. Facilities, Inc.*, B-418229, B-418229.2, Jan. 30, 2020, 2020 CPD ¶ 65 at 8; *Procentrix, Inc.*, B-414629, B-414629.2, Aug. 4, 2017, 2017 CPD ¶ 255 at 15. Additionally, because there is no requirement that a discriminator be the most heavily weighted factor or subfactor, there is no basis to conclude that the agency gave improper weight to the evaluation factors. See *MindPetal Software Sols., Inc.*, B-420070, B-420700.2, Nov. 18, 2021, 2021 CPD ¶ 375 at 9.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

(...continued)

object to NASA's conclusion that the offerors' proposals were of equal merit on the past performance factor. The relative merits of offerors' past performance information is generally within the broad discretion of the contracting agency. *Metric 8 LLC et al.*, B-419759.2 *et al.*, July 29, 2021, 2021 CPD ¶ 299 at 23. Additionally, there is no requirement that an incumbent be given extra credit for its status as an incumbent, or that the agency assign or reserve the highest rating for the incumbent offeror. *Hendall, Inc.*, B-417513.3, B-417513.4, Feb. 24, 2020, 2020 CPD ¶ 87 at 9.